

IN THE MATTER OF	:	BEFORE THE
SCI FUNERAL SERVICES OF	:	HOWARD COUNTY
MD, INC.	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-026C

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DECISION AND ORDER

On September 23, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of SCI Funeral Services of MD, Inc., for two mausoleum buildings in an existing cemetery in an M-1 (Manufacturing: Light) Zoning District, pursuant to Section 131.N.11 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Robert Vogel testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence, I find the following facts:

1. The subject property is located in the 1st Election District at the northwest corner of the MD 103 intersection with US 1 and is also known as 7250 Washington Boulevard (the "Property"). The Property is referenced on Tax Map 37, Grid 23, as Parcel 179/B.

2. The irregularly shaped, 1,800-foot wide, 2,800-foot deep Property has about 1,600 frontage feet on Washington Boulevard and 3,300 frontage feet on Meadowridge Road. Metal fencing attached to brick piers runs along both roadways. The Property is maintained as a lawn area for the burial plots. In the northwestern wooded portion is a service building and outdoor storage yard. In the northern area is a maintenance complex. A funeral complex dominates the southern portion. In the Property's center is a 2.5-story former single-family dwelling used for cemetery offices. The historic building is identified as HO-174 and is known as the Tubman House. A network of paved driveways winds through the cemetery. The site's rolling topography slopes downward through the eastern area to a stream dammed to create several ornamental ponds.

3.. Vicinal properties. The Maryland State Highway Administration owns The M-1 zoned, adjoining unimproved properties north of the US 1 side of the Property. The Administration acquired these properties for the construction of I-95 and MD 100. The M-1 zoned 6.83-acre Parcel 174 is improved by a warehouse development.

Across Meadowridge Road, the mostly M-1-zoned properties are improved with several commercial uses and the Meadowridge Office Park, a large complex comprising several large light industrial use structures. Several nonconforming single-family detached dwellings also remain in this area. The property within about 600 feet of the US 1 right-of way is zoned CE-CLI. Across US, the CE-CLI-zoned properties are improved by a pet cemetery and several commercial and industrial uses.

1. Roads. US 1 at the Property's entrance has two northbound and two southbound travel lanes, with a southbound left turn lane to MD 103. There is about 75

feet of paving within a variable width right-of-way. The posted speed limit is 45 MPH. At the MD 103 entrance has one westbound and one eastbound travel lane to the northwest and one westbound and two eastbound travel lanes southwest of the entrance. The variable pavement width has a proposed 80-foot right-of-way. The posted speed limit here is 40 miles per hour. These entrances have existed for many years and have no sight distance issues. According to data from the State Highway Administration, the traffic volume on US 1 at MD 103 was 26,370 ADT (average daily trips) as of 2007 and at MD 103 west of US 1 8,892 ADT.

2. Water and Sewer Service. The Property is served by public water and septic facilities.

3. General Plan. The 2000 General Plan Policies Map 2000-2020 designates the Property as "Employment Areas and Redevelopment Corridors." The 2000 General Plan Transportation Map 2000-2020 depicts US 1 as an Intermediate Arterial and North Chatham MD 103 as a Minor Arterial.

4. Zoning History. In BA Case No. 86-25E, the Board of Appeals granted Service Corporation International a special exception to construct a mausoleum. In BA Case No. 90-40E, the Board granted the petitioner a special exception to construct a mausoleum in an existing cemetery. More recently, in BA Case No. 00-03E the Board granted Howard E. Hubbard Funeral Services a special exception to construct two mausoleum buildings in two phases. The petitioner completed the first phase, but not the second, the approval for which is expired.

5. The Proposed Conditional Use. The Petitioner proposes to construct two mausoleum buildings on the site of the existing one. These two buildings would be sited 300+ feet from the closest, eastern property line and contain 255 entombment spaces. The operating hours for the mausoleum are the same as the cemetery, 9:00 a.m. to 4:00 p.m.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The General Plan designates the area as Employment Areas and Redevelopment Corridors. Because the proposal is an expansion of an existing use, and has little or no impact on area commercial uses, it is consistent with the General Plan.

The Nature and Intensity of the Use. The use consists of two mausoleum buildings in an existing cemetery and the structures would more than 300 feet from the

nearest property, the State Highway Administration excess right-of-way, and about 1,600 feet from the Meadowridge Road right-of-way.

The size of the site in relation to the use. The proposed use of the Property for the mausoleums is relatively small compared to the site, and the intensity of use is extremely low. The Site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. The Site can be accessed from either an intermediate or a minor arterial driveway. Both entrances have more than adequate sight distance,

The appropriateness of the conditional use in combination with a permitted use on the site. This section does not apply.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in a B-2 District. The proper question is whether there are facts and circumstances showing that the particular use proposed at the

particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mosburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with the bulk storage of fuel oil in a B-2 district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The petition states that proposed use will not generate anything out of the ordinary for the use. I therefore conclude that any inherent operational adverse effects resulting from the proposed conditional use will not be greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed structures will be located a considerable distance from public streets and lots. The cemetery is passive in nature. The existing and any proposed landscaping meet minimum requirements. I therefore conclude the location, nature and

height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

No modification to the existing parking is proposed. The existing curbside parking on the interior road network within the cemetery is more than adequate to serve the use.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing driveways appear to provide continued safe access, with adequate sight distance.

II. Specific Criteria for Cemeteries and Mausoleums (Section 131.N.11).

a. Graves with headstones or permanent markers greater than 3 feet in height shall not be located within 20 feet from the property lines of adjacent residentially zoned lots in residential use.

No graves with headstones or permanent markers greater than three feet in height are located within 20 feet from the property lines of adjacent residentially zoned lots in residential use, in accordance with Section 131.N.11.a.

b. Walls, fences and/or planting of shrubbery, trees or vines as may be reasonable and proper to afford adequate screening may be required.

The cemetery is adequately screened and buffered by distance, existing landscaping and fencing. No additional walls, fences or planting of shrubbery, trees or vines to afford adequate screening is required pursuant to Section 131.N.11.b.

c. When approving a cemetery, the Hearing Authority may authorize future construction of accessory structures not requiring further Hearing Authority approval, such as mausoleums, vaults, columbaria, and sheds. The area within which the future changes are authorized must be delineated on the conditional use plan and located at least 50 feet from all property lines.

No future construction of accessory structures such as mausoleums, vaults, columbaria, or sheds is proposed; therefore, Section 131.N.11.c does not apply.


ORDER

Based upon the foregoing, it is this **30th day of September 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of SCI Funeral Services of MD, Inc., for a conditional use to construct two mausoleum buildings in an existing cemetery in an M-1 (Manufacturing: Light) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use shall be conducted in conformance with, shall apply only to the proposed two mausoleum buildings as described in the petition, and depicted on the Conditional Use Plan for the "Mausoleum Expansion Site at Meadowridge Memorial Park submitted on July 21, 2009, and not to any other activities, uses, or structure on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed 10/2/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.